

1 UNITED STATES BANKRUPTCY COURT
2 For the Eastern District of Virginia
3 Richmond Division
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6 December 5th, 2008
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9 Ch. 11 Circuit City Stores, Inc.
10 08-35653-KRH
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14 Transcript of testimony and other incidents in the
15 above, when heard on December 5th, 2008, before the
16 Honorable KEVIN R. HUENNEKENS, Judge.
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24 CRANE-SNEAD & ASSOCIATES, INC.
25 4914 Fitzhugh Avenue
Richmond, Virginia 23230
Tel. No. (804) 355-4335

1 APPEARANCES:

2

3 MR. DOUG FOLEY

4 McGuire Woods, LLP

5 901 East Cary Street

6 Richmond, Virginia 23219

7 Counsel for debtors

8

9 MR. GREGG GALARDI

10 Skadden, Arps, Slate, Flom, LLP

11 One Rodney Square

12 PO Box 636

13 Wilmington, DE 19899

14 Counsel for debtors

15

16 MR. BRADFORD ENGLANDER

17 7200 Wisconsin Ave.

18 Suite 800

19 Bethesda, MD 20814

20 Counsel for Alliance Corp. Source Interlink

21 Media, LLC

22

23

24

25

1 MR. BRUCE MATSON
2 951 Byrd St.
3 Richmond, Virginia 23219
4 Counsel for Bank of America

5
6 ROBERT VAN ARSDALE
7 Assistant United States Trustee
8 600 East Main Street Suite 301
9 Richmond, Virginia 23219

10
11 MR. DUSTIN BRANCH
12 2029 Century Park East
13 Suite 2600
14 Los Angeles CA, 90067
15 Counsel for various landlords

16
17 MR. DAVID HILLMAN
18 919 Third Ave.
19 New York, New York 10022
20 Counsel for Panasonic Corp.

21
22
23
24
25

1 MR. JOHN MCJUNKIN and DAVID CARRIGAN

2 1900 K. Street NW

3 Washington, DC 20006

4 Counsel for Bethesda Softworks, LLC

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7 TELEPHONIC APPEARANCE:

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9 MR. SEAN LEUSIN

10 Counsel for VIWY Limited Partnership

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1 THE CLERK: In the matter of Circuit
2 City Stores, Inc., case number 08-35653, hearing on
3 items one through 33 as the matters for today's
4 docket.

5 MR. FOLEY: Good morning, Your Honor,
6 Doug Foley on behalf of the debtors.

7 First I want to thank the Court for the
8 opportunity for the last hour to try to work out
9 some additional resolutions that are on the agenda,
10 and I believe we have done that.

11 Today with me at Counsel's table is
12 Gregg Galardi from the law firm of Skadden, Arps,
13 Slate, Meagher & Flom. And here from the company
14 today, Your Honor, on the front row is Mr. Jim
15 Marcum, Chief Executive Officer, as well as Bruce
16 Besanko, the Chief Financial Officer for the
17 company, Reggie Hedgepeth, who is the General
18 Counselor for the company. Also we have Chris
19 Crowe, who is Director of Real Estate, who is with
20 the company as well, Your Honor.

21 THE COURT: All right.

22 MR. FOLEY: Your Honor, we did file an
23 amended agenda last night. If Your Honor doesn't
24 have a copy, I would --

25 THE COURT: I do have a copy

1 and I reviewed it.

2 MR. FOLEY: All right. We would
3 essentially like to file that agenda, Your Honor,
4 with a couple of exceptions, some settlements,
5 resolutions.

6 Just to go through starting with
7 item number one, this is a motion to file schedules
8 and statements. Our anticipation is to file next
9 week and give notice to parties by December 19th.
10 So although we ask for the end of the month we
11 anticipate filing this next week. And the motion
12 has not been opposed and we would ask permission to
13 submit an order.

14 THE COURT: That will be granted.

15 MR. FOLEY: Thank you, Your Honor.

16 With respect to items number two,
17 three and four, and seven, these are special
18 employments applications.

19 The first one for our firm is for Counsel
20 for debtors. And also with respect to item number
21 three, application for Kirkland & Ellis to employ as
22 special financing counsel; and also application,
23 number seven, none of those applications have been
24 opposed.

25 We also have, Your Honor, an employment

1 application for Ernst & Young as tax consultants.
2 We would ask the Court -- there has been no
3 objections with respect to those applications and we
4 would ask the Court for permission for those
5 applications.

6 THE COURT: Does any party wish
7 to be heard in connection with the proposed
8 applications?

9 All right. They will be granted.

10 MR. FOLEY: Thank you, Your Honor.

11 With respect to the application of
12 Rothschild as Investment Banker and Financial
13 Advisor, as the agenda reflects, Your Honor, the
14 Committee had until yesterday afternoon to object,
15 we have been working through their issues. And I
16 believe we have agreed on a resolution of their
17 issues. We would like the US Trustee's endorsement
18 on these orders to submit those orders as well.

19 THE COURT: All right.

20 MR. FEINSTEIN: Good morning,
21 Your Honor. I'm Robert Feinstein, Counsel for the
22 Creditor's Committee. We have been working
23 delinquently with Debtor's professionals including
24 directly with Rothschild on modified terms
25 essentially changing, in many cases reducing the

1 proposed structure. It's consistent as part of a
2 whole, Your Honor, but which you will see reflected
3 in a number of pleadings we filed.

4 We are trying to do our best, Your
5 Honor. And you will see a number of positions the
6 Committee is taking. We are trying to reduce the
7 administrative burden to make sure that any dollars
8 that doesn't need to go out the door don't go out
9 the door today. It's somewhat controversial, I
10 guess, but in many cases these are sale tax
11 payments, and employee payments, and so forth. We
12 are obviously in a challenging time and with that in
13 mind, on a number of the applications, including
14 these two professional applications the Committee is
15 the way it is. The specific terms of Rothschild and
16 FDI that we agreed to would be reflected in terms of
17 the order that we are working on. And we would
18 submit those on consent of the Committee and
19 debtors, Your Honor.

20 THE COURT: Very good.

21 Does any other party wish to be heard?

22 All right. Then with the consent of the
23 Committee and the approval of the Office of the US
24 Trustee the Court will approve those applications.

25 MR. FOLEY: Thank you, Your Honor.

1 Item number eight on the agenda is
2 a motion to file certain documents under seal. And
3 if I could just pass over that one for a moment
4 because the underline motion is contested so it was
5 not reflected to deal with those together.

6 Item number nine, Your Honor is the
7 motion to establish compensation procedures, and
8 that motion also is not opposed. But there is one
9 amendment to the procedures and we have spoken with
10 the Office of the US Trustee today before the
11 hearing. And we are going to make an amendment to
12 that one with their endorsement and submit that to
13 Your Honor.

14 THE COURT: Does any party wish to
15 be heard in connection with that motion?

16 All right. The Court will approve
17 that as amended with the endorsement of the Office
18 of the US Trustee.

19 MR. FOLEY: Thank you, Your Honor.

20 With items number ten on the docket,
21 Your Honor, this is a matter involving our motion to
22 procedures, we have resolved one of the objections.
23 We have not resolved the other objection but we are
24 working through that. And for the procedure order
25 we ask that this be adjourn to the December 22nd

1 docket.

2 THE COURT: That will be adjourn.

3 MR. FEINSTEIN: Thank you, Your Honor.

4 And with item number eleven,

5 that motion, Your Honor, and there had been

6 significant objections to that. We are also working

7 with the Committee with respect to that to work

8 through that as well. And we ask that every thing

9 related to matter eleven be adjourn to December

10 22nd.

11 MR. GALARDI: We have been working with the

12 Committee and we understand that they have

13 objections to that. We met with them yesterday and

14 we also have been working very hard with them. We

15 are currently putting it over to December 22nd. We

16 may actually come back on January 16th. I think

17 that is another date we have. I just want to give

18 Your Honor notice of that because we may just simply

19 file a notice say it's further adjourned. Some

20 people in the courtroom know that we may not be done

21 December 22nd. Again, as Mr. Feinstein said we have

22 made a lot of progress with negotiations between

23 ourselves, the Committee, so for now we would like

24 to put it off to December 22nd.

25 THE COURT: All right. That will

1 be adjourn to December 22nd.

2 MR. DUNCAN: Your Honor, if we could be
3 heard on that please?

4 THE COURT: Yes.

5 MR. McJuskin: Your Honor, John
6 McJuskin on behalf of Bethesda Softworks, LLC.

7 THE COURT: Bethesda Softworks?

8 MR. McJUSKIN: Yes, Softworks, LLC.

9 In connection with this matter

10 I would like to raise the motion, my partner who has
11 been working on this matter. If he could be heard?

12 THE COURT: Yes.

13 MR. CARRIGAN: Good morning, Your Honor,
14 Daniel Carrigan.

15 THE COURT: Carrigan?

16 MR. CARRIGAN: Yes, Your Honor.

17 Your Honor, our particular observation on
18 this, what is on the agenda, number 12 on page 9,
19 our response to another motion is listed as an
20 objection to this motion. And I noticed in the
21 Debtor's response, filed the response that our
22 response listed was not addressed. All we are
23 saying is that we believe this should come up at the
24 time the reclamation motion is going to be
25 addressed.

1 Thank you, Your Honor.

2 THE COURT: If we address that today it
3 will certainly be taken up at that time.

4 MR. CARRIGAN: Thank you, Your Honor.

5 MR. FOLEY: One matter we would like to
6 take out of order Your Honor relates to the motion,
7 the 9019 motion of Panasonic, which is item number
8 31 on the agenda. The Committee filed an objection
9 to that settlement. Late last night I believe a
10 settlement had been worked out with respect to that.
11 And counsel to the Committee are here towards that
12 settlement.

13 THE COURT: All right.

14

15 THE COURT: Please identify yourself each
16 time you come to the podium so we have it on the
17 record.

18 MR. FEINSTEIN: Certainly.

19 Robert Feinstein for the Debtor's
20 Committee. Your Honor, the amendment that we made
21 that we reflected in a memorandum form agreement
22 with them and debtor has the attached of a form of a
23 consent order to be submitted. It certainly makes
24 changes.

25 One is to address the treatment of

1 Panasonic claims with respect of merchandise that
2 was sold prepetition. The initial motion and
3 agreement there were to be a payment to Panasonic
4 for that amount. And there was an agreement by
5 Panasonic to sale, both of those provisions are out.
6 So all rights are reserved with respect to
7 prepetition cosignment. There is no obligations on
8 Panasonic's part to sale on credit. They will be
9 selling on CIA terms.

10 But with all other respects the agreement
11 will be respected and the provision in the agreement
12 for the sale of the remaining merchandise that is
13 still in debtor's possession. And the agreement we
14 will submit Your Honor will address all of that.

15 THE COURT: Thank you.

16 Does any other party wish to be heard?

17 MR. SMITH: Good morning, Your Honor, J.R.
18 Smith on behalf of Panasonic. Here with me today is
19 Mr. David Hillman.

20 THE COURT: Thank you.

21 MR. HILLMAN: Good morning, Your
22 Honor. I heard what Mr. Feinstein had to say with
23 regard to settlement agreement. That was accurate.
24 However we did take great pains last night and this
25 morning to memorialize the changes to the settlement

1 agreement and to the order. And to the best of my
2 knowledge there is no dispute or issue with respect
3 to the settlement agreement or the order and we are
4 simply at house keeping phrase for the order to be
5 submitted. So to my knowledge there is no further
6 negotiation and it is just a house keeping matter at
7 this point.

8 THE COURT: Very good. Thank you.

9 MR. HILLMAN: Thank you, Your Honor.

10 MR. FEINSTEIN: That's right, Your Honor.

11 I think I left out one thing, Your Honor, that Mr.
12 Hillman will appreciate me saying. We are in
13 discussions but I don't think it has been formulated
14 or resolved to development program to provide trade
15 support and administrative support for the company.

16 THE COURT: Very good. Thank you.

17 MR. MATSON: Good morning, Your Honor.

18 Bruce Matson here on behalf of Bank of America.

19 This happened very recently. We did have an issue
20 in how this would be resolved. We would like to see
21 the final order. We don't anticipate any issues.
22 Mr. Gelardi assured me that we don't have an issue.
23 We would like to look at the order before it gets
24 enters.

25 MR. FEINSTEIN: Just so Your Honor

1 has some background, we would have needed amendment
2 if it came down to prepetition status. The banks
3 were waiting to see how the Committee reacted. This
4 happened late last night around 11:00 or so.

5 THE COURT: Very good. Thank you.

6 So with the amendments stated on
7 the record the Court will approve that order when it
8 comes in.

9 MR. FOLEY: Thank you, Your Honor.

10 Your Honor, the next two items
11 we would like to take up involve a motion
12 Shopping.com, those are items number eight, which is
13 unimposed and item number 26, which was filed
14 yesterday. Mr. Cohen is here for Shopping.com.

15 THE COURT: Thank you.

16 MR. CONDYLES: Good morning, Your Honor,
17 Michael Condyles on behalf of Shopping.com. I would
18 like to present to the Court Jeff Cohen. We have
19 submitted a motion, it has not yet been entered.
20 And I would ask that he be permitted to speak before
21 the Court.

22 THE COURT: He may.

23 MR. COHEN: Good morning, Your Honor,
24 Jeffrey Cohen on behalf of Shopping.com.

25 Your Honor. I think this should be

1 pretty short. In essence, our motion is a request
2 for adequate insurance (inaudible) and
3 acknowledgement from Debtors and the Court that any
4 postpetition service provided and qualify, and a
5 request to the alternative. I'm not going to go
6 through all of this. I think we can narrow it down.

7 Basically Shopping.com is an online
8 capacity website. It permits the debtors to post
9 advertisements of the sale items on Shopping.com
10 depending on what the debtors pay or intend to pay
11 Shopping.com dictates where their adds would be
12 placed on the site.

13 The higher priority the logo of Circuit
14 City logo will appear next to the sale the link
15 saying price, it will have a logo. When they click
16 on that logo it will go to Circuit City.com and that
17 occurs a fee within Shopping.com.

18 In addition to that Shopping.com
19 in working with the debtors work to optimize the
20 relationship. By doing that the debtors will be
21 struck then to negotiate deals with third party
22 vendors on behalf of it.

23 For example, not many people go
24 directly to Shopping.com. They go to google and
25 they put in a television they would like to see with

1 various sale prices across the internet.

2 Shopping.com will negotiate with google that when
3 that item is searched on google then Shopping.com
4 will have a higher priority towards the top of the
5 first page. And when you go to Shopping.com on
6 google and you go to Shopping.com Circuit City will
7 be highly listed.

8 So Shopping.com encourages cost in
9 negotiation with vendors. And then when a consumer
10 clicks on Shopping.com it results in a charge and
11 Shopping.com then gets reimbursed for that.

12 What we are asking for today is it seems
13 that the debtors have acknowledge at least in part
14 in their objection is that a minimum in order
15 acknowledging postpetition services will
16 characterize that any click by a consumer on
17 Shopping.com that results in the routing of the
18 CircuitCity.com website will qualify as an
19 administrative expense claim.

20 The debtors do say in their
21 objection that they have no objection to that if we
22 can prove that in addition to a transaction -- Your
23 Honor, I believe if you review paragraph 18 in the
24 debtor's objection and has admitted as a part of the
25 admission by the debtor's clear statement that the

1 debtors would be severely prejudiced if Shopping.com
2 terminated the agreement.

3 The debtor's successful
4 reorganization is dependent upon remaining a high
5 level of sales particularly during the holiday
6 season, the internet in particular, and Shopping.com
7 in particular provides crucial avenues by which the
8 debtors may obtain this.

9 Without Shopping.com services the
10 debtors suspect a decline in sales at their on line
11 stores. So I think at a minimum an acknowledgement
12 of postpetition services would qualify as
13 administrative expense claim and of course we heard
14 the debtor's response. I don't believe that would
15 be a disputed issue.

16 Shopping.com now request in addition to
17 that is not the long list of items I mentioned in
18 the motion, we are not going to ask Your Honor today
19 to give us that. I do ask Your Honor, because
20 unlike your typical relationship with a vendor or
21 service provider, since Shopping.com is going out
22 and expending cost on behalf of the estates and
23 issue bills on a 30 days basis. So at the end of
24 the month they will issue a bill by the 15th day of
25 the month then its 30 days terms. It often results

1 in Shopping.com extending resources and sometimes
2 waiting 60 to 90 days of providing 60 to 90 days
3 worth of services before we would know whether
4 payment on that first bill, that first month, will
5 be made on a timely basis.

6 So Shopping.com's request is a
7 deposit, not to different from a treatment of a
8 utility product, as an internet provider. I think
9 you can draw a parallel between the services of
10 Shopping.com and a utility provider.

11 Your Honor, considered a utility deposit
12 provide a two week deposit to provide services for
13 30 days. Shopping.com would make a similar request
14 for a deposit to protect them especially since out
15 of pocket may occur. In addition, Your Honor, that
16 we bill every 30 days with a 30 days notice, go out
17 and pay on behalf of the estate. What I would ask
18 Your Honor to do is to permit Shopping.com to issue
19 a bill every 15 days and maintain a 30 days notice,
20 but this way we are just trying to figure out
21 different avenues of providing Shopping.com with
22 that little bit more of protection and yet
23 maintaining the use of the services for Circuit City
24 through the critical holiday season and in light of
25 electronics through the uptake for this. We want to

1 make sure they can continue to use the services and
2 be permanently listed.

3 THE COURT: Thank you.

4 MR. FOLEY: Your Honor, Doug Foley on
5 behalf of the debtors. We filed our response and we
6 plead out the arguments in the papers that the
7 request for relieve of motion although we appreciate
8 Mr. Cohen backing off some of the request from the
9 motion. But it is still essentially -- they are not
10 seeking 365(B)2 because it is too early for us to do
11 that.

12 If they want to send us bills more often
13 then they are free to send us bills more often as
14 long as we are not obligated to pay them more often.
15 What they have asked for is no different from any
16 other contract party, the third party --
17 Shopping.com with extending cost of credit to
18 provide the service, we don't have that in this
19 case. We are sympathetic to their position. We
20 would ask the Court to deny their motion.

21 THE COURT: What does the contract say
22 about the billing cycle?

23 MR. FOLEY: It is every 30 days I believe.
24 Thirty days for the bill, thirty days to pay.

25 THE COURT: Thank you.

1 Does any other party wish to be heard in
2 connection with this matter?

3 Mr. Cohen, do you wish to reply?

4 MR. COHEN: Your Honor, I'll be
5 brief. Just to address the debtor's points, I
6 believe it's performed in the contract. The
7 contract does not require that we go out and pay
8 third parties providers to risk this we do that at
9 the instruction of CircuitCity.com. Their account
10 manager talks to our account manager and request
11 that we go out and make payments -- we are obligated
12 to perform, we will. We are under no obligation to
13 negotiate third party vendors for higher placements
14 on the website. We do that at the request of the
15 company.

16 THE COURT: With regard to that,
17 what are you asking me to do, isn't that just a
18 matter of business negotiations between you and
19 Circuit City?

20 MR. COHEN: All I'm asking
21 Your Honor to do is to protect us from posting
22 deposit. If Circuit City wants to pay us in advance
23 and say I am willing to pay you to pay them, that's
24 fine too. But I think it's less burdensome on
25 Circuit City to post a two week deposit

1 and then be able to run up credit with us
2 on terms as opposed to us delaying the
3 listing by demanding cash in advance.

4 THE COURT: But isn't that
5 something that you can negotiate directly with
6 Circuit City? That is not something that
7 the Court should impose, is it?

8 MR. COHEN: Your Honor, I believe
9 we can negotiate directly with them and I
10 advised my client of that. I think in these
11 economic times people are looking for a second
12 degree of comfort. They have seen comfort
13 given to others similarly situated creditors.
14 If you look at utility motion, there are nine
15 included, there is a third party vendor who
16 consolidates the utility bills. That vendor
17 does not qualify as utility but is getting a
18 deposit. I think what my client is looking
19 for is the comfort that may go out of pocket
20 that they have something protecting them,
21 that they will in fact get reimbursed. So if
22 they fail to pay a bill they will have a deposit
23 there. We are a unique party involved.
24 We are critical for their online services.
25

1 Your Honor this will impact the debtor's
2 ability to operate on line would be significant. A
3 request for a two week deposit is a \$100,000.00
4 issue in a multi billion dollar case. I think it
5 would be beneficial for the debtor to be willing to
6 post that deposit.

7 THE COURT: Thank you.

8 Is there anything further?

9 MR. COHEN: I appreciate your time.

10 THE COURT: Thank you.

11 The Court will grant the motion for
12 filing documents under seal with regard to the
13 motion for adequate insurance of payment. The Court
14 is going to deny that motion. I'm not going to
15 require a two week deposit. And I think the parties
16 are in agreement that post petition transaction are
17 to administrative expense status and will submit an
18 order to that and will grant that.

19 MR. FOLEY: Thank you.

20 MR. COHEN: Your Honor, may I be
21 excused?

22 THE COURT: You may be excused. Thank
23 you.

24 MR. FOLEY: Your Honor, the next
25 item is number 12.

1 THE COURT: Thank you.

2 MR. GALARDI: Good morning, Your Honor,
3 Gregg Galardi on behalf of the debtors.

4 Your Honor, the next motion is
5 item number 12. We have addressed this on the first
6 day. As I pointed out, Your Honor, on the first day
7 I did point out what I think may be the most
8 controversial, in particular, and as I pointed out,
9 Your Honor, and I will proffer the testimony of Jim
10 Marcum, who is the active CEO and President, and the
11 Committee agrees that we can do this by proffer.
12 They will be free to cross if they so desire.

13 Mr. Marcum is the acting CEO and
14 President of the company and Vice Chairman of the
15 Board. I thought it was important to express his
16 position of why we continue to support our former
17 employees and our request for continuing what we had
18 called (inaudible). But as I pointed out Your
19 Honor, there are two decisions that have been
20 recently rendered by prepetition obligations
21 probably entitled priority and probably not entitled
22 to administrative expenses. As I noted, Your Honor,
23 on the first day we acknowledged that and we still
24 believe for other reasons that these statements are
25 important for Circuit City to make.

1 Mr. Martin, if called as a
2 witness, would advise Your Honor that there
3 were 700 positions that were, in fact, terminated
4 and given notice of terminations, I think it was the
5 Thursday and Friday before we eventually filed our
6 petition for relief in these cases. And each of
7 those employees were notified that they were being
8 terminated. And I know it received wide press
9 coverage here in the Richmond area as well as
10 nationwide. But there were 580 people that were
11 terminated at that point. We believe, Your Honor,
12 that there was roughly 1.1 million dollars a week to
13 be paid to these terminated employees as we went
14 forward and therefore the 60 day period, I believe
15 that it was and Mr. Marcum would confirm that it
16 would be approximately \$8,000,000.00 in payments.

17 Mr. Marcum would also testified that
18 approximately 4.4 have already been paid to those
19 employees. Your Honor, Mr. Marcum would say that
20 the relief would be in the best interest of the
21 company notwithstanding the fact that claims made be
22 only priority or to some extent unsecured on the
23 following basis.

24 If he was called as a witness, he would
25 testify that many of the people were given

1 significant time and effort and in some instances
2 have worked their lives at Circuit City. It was an
3 unfortunate fact that the company had to take but
4 nonetheless the needs of these employees and their
5 wages are still in the best interest and reasonably
6 necessary to the reorganization for these two
7 reasons.

8 First of all, Your Honor, these
9 people are still in the community and are still
10 loyal customers of Circuit City and it is important
11 for us to continue with the customer loyalty and the
12 goodwill of these employees. So therefore it was
13 important to treat them what we believe is right.

14 Importantly, Your Honor, and Mr. Marcum
15 would testify that it is also critical for the
16 morale for the still 30 or 33 thousand people still
17 at Circuit City. In deed, Your Honor, there has
18 been many questions that if Your Honor doesn't
19 understand then Mr. Marcum could testify that there
20 had been many meetings with people who are still
21 employed and still concerned about their own wages
22 and benefits. Termination rights, Your Honor, which
23 Mr. Marcum is familiar with having been in this
24 situation before with the fact that contracts go
25 unforceable and there are benefits and other

1 programs. We don't have a retention program at this
2 company at this point and time.

3 Your Honor, Mr. Marcum would
4 testify that we have limited availability, but
5 nonetheless, Mr. Marcum would still testify that
6 what he thought was in the best interest and what
7 the company determined to be in the best interest
8 was to treat these employees the way they did
9 because of the need to continue to have the 30 some
10 thousand work force in the company, still believes
11 in the company and still believes in the employees,
12 and that they are instrumental and the company
13 achieving the business plan for these companies.
14 And therefore he still believes it is in the best
15 interest notwithstanding the four million that has
16 gone out the door, and notwithstanding the fact that
17 we are still requesting a four million to go out the
18 door because it would have a spill over affect, not
19 only on the customer base, but the customers in the
20 community, and also a negative impact on those
21 employees that are still in the company. And at
22 this critical time and this critical time of the
23 year that making each payment and with these
24 employees, that although it may not be required
25 under the law, that the four million dollars should

1 still be paid.

2 Finally, Your Honor, we would
3 also note that if Mr. Marcum was called to testify
4 that it was somewhat to his nature or accidental
5 nature, that we gave similar notices, as Your Honor
6 knows, with respect to store closing employees, but
7 because they were actually store closing employees,
8 those people are going to be paid essentially the
9 same notice that they fortunately will be able to
10 work out their entire time as store level employees.
11 So it looks like all of those employees would get
12 essentially the equivalent notice, although they
13 were too notified prior to bankruptcy that their job
14 would be terminated. So they continued to work at
15 the store level.

16 Your Honor, again, Mr. Marcum, would
17 further testify that these payments were in the
18 budget that we presented to the Court, that they
19 were negotiated with the lenders, that the lenders
20 understood the company's position and accommodated
21 the company's position.

22 So then, again, Your Honor, Mr. Marcum
23 would testify that he believes it is in the best
24 interest of the company and at this time to make the
25 business plan achievable to continue to make these

1 payments and make the balance of those \$4,000,000.00
2 payments. That would be Mr. Marcum's testimony.

3 THE COURT: Does any party wish
4 to examine Mr. Marcum with regard to the proffer
5 testimony?

6 All right. The Court will accept the
7 proffer.

8 MR. GALARDI: Your Honor, I guess
9 it comes down to some legal argument. Your Honor,
10 the legal argument I think fails us here as the fact
11 that unless Your Honor wants to go against the two
12 opinions that we've seen, there are two clear
13 opinions out there today, which say we gave notice
14 of termination and we are not contesting those
15 facts. We gave notice of termination prior to
16 filing. And those two opinions would say that you
17 terminated there is a prepetition that is priority
18 perhaps, the ten thousand, I think these people got
19 that amount or close to it. So there is another
20 balance that would be an unsecured claim.

21 Again, if you look strictly at the
22 employees that's probably the law. But as the law
23 defines whether it was necessary for the
24 reorganization, Your Honor, we think this Court has
25 the power to authorize their payments.

1 And Mr. Marcum's testimony
2 would be that but I can't put intangible when we get
3 \$4,000,000.00 in benefits, or \$5,000,000.00, the
4 goodwill of these employees, the loyalty of these
5 employees, the dissimilar treatment although for
6 legal grounds that they are not the same as the
7 store level employees to keep these corporate
8 headquarters employees. And then the signal
9 that it sends to the rest of the corporate
10 employees who are being asked during this period,
11 which is a difficult period, to keep their head in
12 the game and to maximize value and to achieve a
13 business plan when it is obvious to them that
14 currently times are bad, the programs they have
15 counted on, the contracts, all of those things as
16 Your Honor knows we cut back significantly, servants
17 payments, those sort of things may not be available
18 even for those employees currently but to send a
19 signal that we are going to do everything for our
20 employees that the Court wants.

21 THE COURT: Thank you.

22 MR. FEINSTEIN: Robert Feinstein
23 with the official creditor's committee. Your Honor,
24 the Committee's objection to this motion was not
25 taken likely. We are sympathetic with the employees

1 and we understand the hardships this might cause
2 them. We appreciate that some of the money has gone
3 to them. So it's not all or nothing at all. But as
4 the representatives of the creditors of this
5 enterprise looking out for all of the constituents,
6 vendors, landlords, the current employees, the 30
7 some odd thousand employees who would be devastated
8 if Circuit City doesn't survive Ch. 11. We felt it
9 necessary to take the position on this and a number
10 of other motions today. It's difficult. It's
11 difficult to understand the consequences of
12 withholding payments to not just employees, but
13 taxing authorities, the landlords, Panasonic, who
14 wanted to get paid nine million.

15 Your Honor, eight million here, nine
16 million here, thirteen million here, pretty soon you
17 are talking about no money. And we live in very
18 uncertain times. As Mr. Cohen said it is a very
19 challenging economic environment. And all one needs
20 to do is read in the newspaper every day to see the
21 kind of challenges that Circuit City is facing, that
22 other retailers are facing, that the vendors and the
23 landlords are facing. Everybody has some real
24 hardship here. We are trying to pull together in a
25 certain effort to make sure that Circuit City

1 remains as a viable enterprise for the thirty some
2 thousand that are still employed and for the benefit
3 of vendors who are looking for a good customer in
4 Circuit City, and for the benefit of the landlord
5 who do not want empty, dark stores.

6 So this is very difficult and it is
7 unfortunate that some people along the way will feel
8 hardship, but it's a shared hardship Your Honor.
9 This is not a step we took lightly. The Committee
10 is comprised not simply of vendors, but some
11 landlords, and PPVC, and a class action on behalf of
12 employers. And all of them unanimously agreed and
13 support the filing of this objection. It is not
14 something, as I said, we did lightly.

15 In terms of the legal argument as Mr.
16 Galardi noted, there is the cases that say these are
17 prepetition claims and consistent with the approach
18 we have taken on all matters before Your Honor
19 today. We are trying to conserve --

20 THE COURT: Well those cases are not
21 binding on this Court --

22 MR. FEINSTEIN: Your Honor, this
23 is a case of first impression. We are asking Your
24 Honor to follow those cases on the law and as a
25 matter of doctrine of necessity. I will

1 certainly make the argument, Your Honor,
2 that it is necessity dealing with the other
3 end, that we not send any money unless we
4 certainly have to in order for the greater
5 good to be pursue. So we are asking Your Honor to
6 deny the motion.

7 THE COURT: If I do deny the
8 motion then certainly the coming into the Court and
9 having to decide the issues and then to litigate
10 those issues and then that is going to distract the
11 company, aren't those things that the Court should
12 take into consideration as well?

13 MR. FEINSTEIN: There are any number of
14 legal issues that could be raised before Your Honor,
15 company management, this is a discreet issue in one
16 of many. I don't know if it is typically burdensome
17 for the company to have to deal with this issue. If
18 Your Honor follows this it would end up priority
19 unsecured claims so will be treated in the order of
20 the bankruptcy code of their case. I don't know if
21 there is really much more than a discreet legal
22 issue for a lawyer to address and for Your Honor to
23 decide.

24 THE COURT: Thank you.

25 Does any other party wish to be heard in

1 opposition to the motion?

2 MR. GALARDI: Your Honor, there
3 is the distraction argument. I also note that those
4 cases may technically apply on legal principals,
5 those were liquidated cases, and one of the things
6 we considered and that is why we looked to Mr.
7 Marcum testify by my proffer is that we were
8 actually looking to what affect this would have on
9 the current employees and that is why we are
10 relying to a large extent of the doctrine of
11 necessity.

12 Your Honor points to another
13 aspect of this. You are absolutely right, there is
14 time and distraction. There is with any prepetition
15 claim but the reason those cases got brought was
16 because as soon as you didn't pay this you have
17 class actions in the first days of the case.

18 Again, based on all of these
19 things in consideration of making decisions, they
20 made the decision, that is to make sure when you are
21 letting a person go out of this company, this was a
22 major layoff as Your Honor knows. It was 500 people
23 at the corporate headquarters right here. So all of
24 those consideration, although maybe not legally
25 technical and that is what the doctrine

1 of necessity goes to it is reasonably necessary to
2 affect a reorganization. We are not liquidating
3 right now. We are not hopping to ever liquidate
4 right now. You will see when we get to the landlord
5 matters we are already trying to and I think the
6 Committee is to reorganize. With that as the
7 motivation, I think there is legal authority under
8 105 even if Your Honor wanted to follow the strict
9 reading of the two other cases to still authorize
10 the relief. There is plenty of relief we have done
11 first day, that is not stricken within the
12 bankruptcy code. The question is the reasonable
13 necessary to reorganization and the company's
14 position is this is reasonably necessary
15 to have this company to have a opportunity to
16 reorganize and we ask that you grant that.

17 THE COURT: Thank you.

18 Does any other party wish to
19 be heard?

20 All right. The Court has read
21 the paper that has been filed and with the
22 testimony that has been offered today in the
23 argument of Counsel. The Court agrees with the
24 company to exercise its business judgement.
25 I think it would be disruptive. I'm not going to

1 rule today on whether claims entitled to
2 administrative expense status, that remains an open
3 issue and one that weighs heavily on the Court in
4 making this decision. I think that given the
5 testimony, the proffer testimony, would indicate a
6 large number of people remain in the community and
7 would need the company for its existing employee's
8 morale that the Court will approve the motion and
9 overrule the objection of the Committee. I did not
10 take the Committee's objection lightly. And I think
11 it is a very strong argument. I think in this case
12 that the motion should be granted.

13 MR. GALARDI: Thank you, Your Honor.

14 Your Honor, I would ask permission
15 that Mr. Marcum be excused so he may go back to the
16 company?

17 THE COURT: Yes.

18 MR. GALARDI: Thank you, Your Honor.

19 Your Honor, with respect to the next
20 motion on the agenda, I think I will be dealing with
21 the rest of them.

22 Matter number 13 on the agenda
23 is again one of the first day motions that the
24 Committee has looked seriously too. It is the
25 motion to pay sales, use, trust fund, and other

1 taxes. There were multiple bases for these
2 payments. Your Honor, we filed an amendment, or an
3 amended motion to seek payments I think an
4 additional \$10,000,000.00 payments. What I believe
5 we have agreed to with the Committee and again we
6 are not saying things we don't believe in and the
7 Committee has raised a very valid objection to the
8 payment of sales, use and other taxes. We have been
9 working on many things. We have not been able to
10 provide them with all of the information with
11 respect to these amended taxes. What we have agreed
12 to do is have an agreement, and whether we are going
13 to do it as a separate order or otherwise, where we
14 will not pay these sales, use and other taxes until
15 we give the Committee the information and whether
16 there are Trust Fund, taxes, or other reasons until
17 the Committee agrees that we can pay those.

18 And should we have a dispute
19 then we will come back on the 22nd with respect to
20 any disputes. We hope not to have any issues with
21 that. But we would like to be able to convince the
22 Committee either that their trust fund, taxes, or
23 some other reason that they should pay because I
24 don't think the Committee wants -- trust fund taxes
25 are not property of the estate. So what we have

1 agreed to do is give them five days notice of that
2 kind of information and if there is an objection to
3 that in that five days then we would not pay it. If
4 there is no objection then we would be authorized to
5 pay it and that is how we will deal with any money.
6 And I'm not going to just limit it to the
7 supplemental, to the extent if there is any money
8 from the original budget, or with respect to
9 additional money we will apply with that procedure.
10 And I think Mr. Feinstein is okay with that
11 procedure.

12 THE COURT: All right.

13 Mr. Feinstein.

14 MR. FEINSTEIN: Yes, Your Honor, I can
15 confirm that we are okay with that procedure as with
16 a number of these matters we are trying to work out.
17 I do want to just signal that the position we
18 continue to take is that if these are
19 demonstratively trust fund taxes, not just property
20 of the estate, it would be appropriate for the
21 debtor to obtain them. But if it's any other kind
22 of nontrustfund payment of prepetition claim then
23 we are going to oppose it.

24 THE COURT: Very good. So that will be
25 approved as modified.

1 I think Mr. Stein wants to --

2 MR. STEIN: Richard Stein on
3 behalf of the Internal Revenue Services, Your Honor.
4 I am at a little bit at a lost on this one because
5 when I read it, and what has been described here
6 today seems to be a little bit different than at
7 least my reading of it, and it won't be the first
8 time that I'm wrong. But I have a great problem if
9 the company intends on not paying over on the 941
10 taxes, certainly the trust fund portion as well as
11 the corporate payment of the 941 taxes. So to the
12 extent that it doesn't deal with each time there is
13 a salary payment made to any employee the company
14 pays into the federal government or to the
15 depository account payments. If they are going to
16 continue to do that I have no problem, otherwise I
17 have a great deal of problem with any kind of order
18 that would authorize the nonpayment of taxes.

19 THE COURT: This order doesn't authorize
20 the nonpayment of taxes. The order that I
21 previously entered authorized the debtor to pay
22 these type of taxes and now with it being modified,
23 it is only that the debtor is going to give five
24 days notice to the committee before they make a
25 payment. And then if the Committee objects to it

1 then you would have to discuss it with the Committee
2 and if nobody agreed then we can come back and I can
3 make a ruling. But right now I am not authorizing a
4 nonpayment of anything.

5 MR. STEIN: Thank you. I apologize.

6 THE COURT: You make a good point.

7 MR. STEIN: Thank you.

8 MR. GALARDI: Your Honor, we
9 understood it as just the authorization you gave us
10 is subject to Committee approval on those matters,
11 and the Committee was clear on its position.

12 Your Honor, that then takes us to
13 matter 14.

14 THE COURT: For the record, Mr.
15 Galardi, I will approve that with the amended that
16 you described.

17 MR. GALARDI: And, Your Honor, I think
18 the Committee as we anticipate I think it will
19 probably be more affective in going back and
20 modifying what Your Honor has already entered. We
21 have had a proposed stipulation that we addressed,
22 you will see the Committee has certain concerns
23 before we take certain actions. I would add this
24 one to that order. Hopefully we will be submitting
25 under separate covers Your Honor an order saying

1 here is how the Committee and the Debtors are going
2 to go forward with any of what I call the bankruptcy
3 prepetition relief. We are working on that order
4 but we just don't have it today.

5 THE COURT: All right. Very good.

6 MR. GALARDI: Your Honor, the next
7 one on the agenda is matter number 14, which is the
8 Debtor's motion for utility services procedures.

9 Your Honor may recall we did
10 this the first day and I guess Mr. Johnson was the
11 one who had raised concern about that. We have
12 since carved out a number of other entries. I
13 believe that this motion is fully resolved although
14 I see right there.

15 The first change, Your Honor, is we
16 have spoken about a block account after going back
17 and forth many times about block accounts, a
18 separate escrow. Essentially what will happen is
19 the bank will set up a reserve that we do not have
20 access to that funds. It just makes it easier like
21 most reserves. And then if somebody makes the
22 request that reserve will be subject to the
23 availability and we will let the Court know of the
24 availability. That was one of the first
25 clarifications we wanted to make to the order.

1 And, in addition, you will see
2 the notice of appeal date on the procedure, we are
3 trying to work out stipulations with all of those
4 parties either by way of paying them, I think we
5 have stipulated that this order does not apply to
6 them very much like Mr. Johnson. It doesn't apply
7 to them so we have with respect to that stipulation
8 and there are others that are listed.

9 In addition, Your Honor, we
10 said in our relief we have negotiated, renegotiated
11 settlements with most if not all of the utilities.
12 I don't think that anyone is still out there that is
13 objecting, I have one adjourn that I know of. We
14 are evaluating the pay in advance or give them a
15 deposit. And then one of things we have talked
16 about, Your Honor, one of the things that will
17 happen in the next hearing or for the final hearing
18 that five million reserve, that two week reserve,
19 will be adjusted accordingly since Mr. Johnson
20 represents every utility I can think of, that
21 reserve will become much smaller. We have resolved
22 his objections.

23 I think then we have resolved
24 all of the objections to this motion that the order
25 can stand with that one modification to the order

1 that says instead of a block account it would be a
2 reserve established by the bank. And we would say
3 this is a final order today. I think we have no
4 parties contesting or asking for any other adequate
5 insurance.

6 The one party is accent energy
7 that ask that this motion with respect to it be
8 adjourn over to December 22nd. So we would
9 essentially carve them out from this, it will not
10 apply to them as a utility, but the same procedure
11 would apply to them if we resolve it or contest it
12 on December 22nd.

13 THE COURT: Does any other party
14 wish to be heard with respect to the utility motion?

15 MR. MATSON: Yes, Your Honor.

16 THE COURT: Mr. Matson.

17 MR. MATSON: Good morning, Your Honor,
18 Bruce Matson again for Bank of America. I don't
19 think we have any issues at all. We just want to
20 seek final order. There were some protections in
21 the first order related to banks but I don't think
22 it's going to be an issue.

23 MR. GALARDI: We are working on that
24 language with Mr. Matson.

25 THE COURT: So then the motion

1 of Accent Energy will be carried over to the next
2 date.

3 MR. GALARDI: Yes.

4 THE COURT: Are you going to
5 be submitting a new order then?

6 MR. GALARDI: I think we will have to
7 submit an amended, whether we call it final order,
8 final utility order, but it will have the language
9 we need to have.

10 THE COURT: All right. The Court
11 will look for that.

12 MR. GALARDI: Thank you, Your Honor.

13 Your Honor, the next matter on
14 the agenda is matter 15. And, again, it is first
15 day relief. The Committee filed a limited
16 objection. It goes to the stipulation we are
17 working on. It is an explanation of what has been
18 up to date, what has not been up to date, and then
19 the notice provision. I think that resolves the
20 Committee's objection. It wouldn't have to be
21 revision to this order, rather it will be superseded
22 by our stipulation. And there were no other
23 objections.

24 THE COURT: Very good.

25 MR. GALARDI: The next matter is 16.

1 It is the first day motion with respect to
2 contractors and satisfaction of liens. Again, we
3 have agreed the same thing that it will be part of
4 the Committee's stipulation there will be a
5 reporting mechanism, a explanation mechanism, that
6 we are working out language. So this order is
7 final, separate order between the Committee and the
8 Debtors.

9 THE COURT: All right. That's approved.

10 MR. GALARDI: Similarly with respect to
11 number 17 on the agenda, that is the motion of the
12 debtor to pay certain foreign vendors and service
13 providers, similar objection by the Committee,
14 similar response. We will add a stipulation of the
15 debtor.

16 THE COURT: That will be approved.

17 MR. GALARDI: Your Honor, the
18 next matter on the agenda is the motion for granting
19 administrative expenses and postpetition delivery of
20 goods, the matter of establishing procedures for
21 reclamation.

22 Your Honor, we received three
23 objections. One was Warner Home Video; the other
24 was Alliance Entertainment and then finally
25 Lumisource filed an objection. I think we have

1 resolved those with all clarification to language
2 that we can put it in the order to be circulated to
3 counsel. I don't know if there was any other
4 objections. I think they have all been resolved by
5 language we worked out to clarify. We are not
6 trying to prejudice anybody rights. We are not
7 trying to limit their rights.

8 THE COURT: Does any part wish to
9 be heard in connection with this motion?

10 MR. ENGLANDER: Good morning, Your
11 Honor, Brad Englander. Our concern, I think the
12 language the debtor propose, I think it needs to go
13 just a step further. I think what the order does is
14 it picks pieces of the language. What the language
15 does is it picks pieces of 546(H). One of the
16 provisions of this -- I'm sorry. I see now that the
17 language has been added. Thank you.

18 THE COURT: All right. Very good.

19 MR. CARRIGAN: Daniel Carrigan,
20 Your Honor, with Bethesda Software, LLC. Your
21 Honor, we filed a response. Our response went
22 beyond the issue that has been addressed under
23 546(H), although that was part of our response
24 as well. Our response is more global and that the
25 debtor has now taken the position that reclamation

1 creditors have a general unsecured claim for the
2 goods and so forth. This is all back to the value
3 that has been argued throughout the northeast, New
4 York, Delaware, and else where. And I am not sure
5 if that is what is before the Court today, although
6 I am prepared to address it if the Court would like.

7 THE COURT: As I understand it
8 nothing is being called along those lines on a
9 substantive basis based on this motion.

10 MR. GALARDI: You are absolutely correct,
11 Your Honor. We have not and I want it to be clear
12 that the reclamation claims, that work with the
13 prepetition security interest, and there is no value
14 -- we are not making that argument. We have not
15 made that argument. We have not made a
16 representation or inclination to make such a
17 representation. What our procedures essentially is
18 that you have the right to go and exercise your
19 reclamation rights as a secured creditor, we are not
20 limiting it.

21 MR. CARRIGAN: With all do respect, Your
22 Honor, that is not the case.

23 THE COURT: Show me what it is that --

24 MR. CARRIGAN: If Your Honor would
25 turn to the motion that was filed. The debtors took

1 the paragraph from the previous page. The debtors
2 submit that the reclamation claims are not entitled
3 to administrative expense with respect to any of
4 reclamation claim, but instead are general
5 nonpriority unsecured claims subject to the debtors
6 rights to object to such unsecured claims on any
7 ground the governing law permits.

8 THE COURT: That's in the motion.

9 MR. CARRIGAN: It is in the motion.

10 However, Your Honor, it is also in the
11 reply that was filed last night. And it's that
12 reclamation creditors are not entitled to adequate
13 protection. However if the Court would turn its
14 attention to the response. I'm sorry I don't have
15 the docket number.

16 THE COURT: I have it in front of me.

17 What page is it?

18 MR. CARRIGAN: It doesn't have a page
19 number, paragraph 13.

20 THE COURT: All right.

21 MR. CARRIGAN: Your Honor, the cases
22 that are cited, they are all the same. These are
23 the cases. Obviously the debtor did take in
24 position these claims are not entitled to any
25 treatment other than a general unsecured claim.

1 THE COURT: You expected them to
2 take that --

3 MR. CARRIGAN: I would expect that.

4 THE COURT: But that is not what we are
5 adjudicating in the motion. All we are doing is
6 establishing procedure as I understand it.

7 MR. CARRIGAN: But the procedures have
8 substantive affect, Your Honor. As Counsel
9 acknowledged at the original hearing is that the
10 current 546(B) remedy is strictly returned goods,
11 and they are being sold even as we speak. So that
12 when we get 120 days down the road is there going to
13 be anything to reclaim, the good will all be sold
14 thorough.

15 What we asked for in our motion,
16 what we suggested in our motion, is the kind of
17 motion that has been entered in Winn Dixie. It's
18 been entered in other cases up in New York, that
19 would basically say that if the debtor is going to
20 get a holiday on responding to and dealing with
21 reclamation claims but not have to address them in
22 the interim, then the catch at the time should not
23 adversely affect the rights, things that happened
24 because the reclamation creditors are not able to
25 get their goods back. That is because the goods are

1 sold or as the structure of this motion had before
2 that the debtor could return goods after 120 days or
3 at some point without the creditor's consent, which
4 has been changed and is now clarified. There would
5 be nothing to get back except that which the debtor
6 no longer wants, those that are broken, or those
7 that didn't sell. We are in the peak season. The
8 goods are being sold through.

9 By the time we ever get around to a
10 resolution anything worth having is already going to
11 be sold. So this procedure motion has substantive
12 impact. The debtor also ask in here, I believe, for
13 clarification that the automatic stay applies here.

14 Now the citations that are in the
15 records, the parentheticals that we suggested that
16 it is only self help. But the breath of the
17 commentary, or the argument, is that any kind
18 because what they want or what they say they want,
19 they don't want distraction in the company.

20 This goes back to the fundamental
21 remedy that we have under reclamation. The remedy
22 of the reclamation is that the notice is given and
23 what typically would happen outside bankruptcy would
24 be that the reclamation creditor, reclamation
25 claimant, whatever the designation, would file a

1 lawsuit to try to obtain reclamation. They would
2 seek a temporary restraining order requiring them to
3 recover the goods.

4 Now during that process and this is all
5 outline actually in cases that is referenced in this
6 reply. If the Court would refer to (inaudible),
7 that case is based on another case, it is based on
8 an older case called Westwood Bank. What Westwood
9 Bank said is that were eliminating reclamation is
10 foreclosure by the secured creditor and use of that
11 foreclosure sale to pay down a secured debt.

12 And what the debtor is concerned
13 about and perhaps justifiably we don't even know how
14 many total reclamation claims there are in this
15 case. In Winn Dixie there is plenty. We knew how
16 many there were. There was a process. There was
17 disclosure. There was at least you knew what was
18 going on, what was happening with the reclamation
19 claim. There is no disclosure provided for here.

20 The order is issued to the substantive
21 rights also has no governing procedures, or
22 standards, or anything else with respect to when the
23 debtor will or will not honor a reclamation claim.
24 There is a provision that they give or sell with a
25 reclamation -- they can either pay him or give the

1 goods back. Well who monitors that. Who approves
2 that. How does the reclamation creditors know that
3 they are being treated the same across the board.

4 We suggested in our response is
5 a one side fits all program. It is also a situation
6 that if the debtor really believes that these claims
7 are valueless under standards, and what those cases
8 do is they take and proxy a foreclosure and use the
9 proceeds to pay down the secured debt. The proxy
10 for that is a quote evaluation, much like under 506,
11 a secured claim or not a secured claim.

12 So the assumption is that if you
13 go through every single claim, or every single
14 reclamation that the lender's lien is always going
15 to be greater -- pay down the unsecured debt. But
16 is that realistic. Is that practical. Is that what
17 happens in the economy. No, it hardly ever happens
18 today. It only happens like that in liquidation
19 sales.

20 And that is our concern, Judge.
21 When we get to the end of this process unless there
22 is some kind of stay of affect of these procedures
23 we are not going to know what is happening with
24 those reclamation creditors. That they could pay
25 for whatever reason, and not even have to bring it

1 to the Court for disclosure.

2 And, Your Honor, in the other
3 cases that we and counsel for the Committee and also
4 for some of the cases in Delaware at least it was a
5 process where they would have a reclamation report
6 which would identify all of the claims, which would
7 identify those that have essentially reduced various
8 reclamation claims whether it's a notice or what has
9 happened in most of those cases is you get to the
10 end of that whole process, you spent a lot of time
11 and a lot of money evaluate in looking for these
12 things. Now we are going to go through this
13 exercise over the next three or three and a half
14 months and we are going to come to an end and we are
15 going to have evaluate -- what is the point in
16 spending the money, the creditors committee are
17 concerned about, and the vendors are concerned
18 about, that everybody is concerned about, what is
19 the point of that exercise. Yes, there needs to be
20 a process. There is no question about it. And we
21 suggested a process in our response. But our
22 concern is that the process, the so called process
23 is going to affect substantive rights, and that it
24 could if it's abused, if manipulated where you go
25 outside of the rules, and frankly most of the cases

1 today it's not unusual. It has turned the rules up
2 side down.

3 The Mating (phonetically) case years ago
4 was all about the confirmation of the plan and then
5 you pay in the order of priority. Well we have
6 these cases today, these great big cases, is that
7 almost everybody gets paid at the front end
8 including for example, with respect to 503(B)9.
9 Those claims have a second priority after the cost
10 and expenses of administration of Ch. 11 case. Now
11 the Ch. 11 process and administration is being paid
12 on an out going basis. And we did not object to the
13 employee's motion. We do not want the employees to
14 be adversely affected, nor the former employees. So
15 we don't have any objections to that. But frankly
16 they are behind us on the 503(B)9 plan and they are
17 getting paid. And various taxes are behind us and
18 are getting paid. And these foreign vendors are
19 getting paid and they are behind us. And the
20 vendors who products are generating money for the
21 debtors operation right now, or at least some of it,
22 are the ones that are having to stand still and wait
23 for a period of time and may never get the claims
24 backs. The debtor comes back in 120 days and say
25 sorry we don't have that any more, or here is what

1 we have left, you can have it.

2 Respectfully, Your Honor, the
3 procedure drives substantive results. And that is the
4 problem with the motion and the process of the
5 structure right now.

6 THE COURT: Isn't that what you have as an
7 administrative expense claim?

8 MR. CARRIGAN: Your Honor, the 503(B)9 is
9 the administrative expense claim, but there is no
10 time to specify to when it paid. But what it does
11 say is that it is senior to most of the other
12 priority claims that are already being paid.

13 And that is the point how can he justify
14 jumping off the entire train, if you will, of the
15 absolute priority rule that if you don't pay
16 prepetition claim, confirmation, when you get off
17 that rule and it may be a problem with the
18 legislature more so, because you are here on the
19 first day and you are here three weeks later and the
20 answer is that this is the very same situation. The
21 economy is dreadful. You've got hundreds if not
22 thousands of people who depend on this company for
23 their jobs. But let's remember and as pointed out
24 in the declaration, there are hundreds if not
25 thousands of vendors who are dependent upon this

1 company. A two million or \$5,000,000.00 account
2 receivable for these people can be just as dramatic
3 if unpaid -- have just a dramatic affect upon other
4 companies.

5 So the trickle down affect, if
6 you will, described is very much equitable to the
7 vendors that are out there. And the fact is I don't
8 think there is any dispute. Although, again, the
9 debtors haven't told us how many reclamation -- in
10 Winn Dixie the debtors told us and they estimated
11 the amounts that would come in and the numbers were
12 known at some point at least. And you could say
13 yes, it's a very large number and if the debtor had
14 to pay all of that money right now, the vendors
15 understand that. On the other hand -- it's one
16 thing that they understand it and is working with
17 the debtor, it's a whole different thing to say as
18 time goes by we will work with you, but trust us.
19 And then at the end the goods are all gone.

20 There has been too many cases, and if I
21 remember the numbers correctly and Counsel can
22 correct me, there are hundreds of millions
23 reclamation claims made, and of course those are not
24 all valid. But that number is going to come down
25 because they are just overstated. But there are

1 hundreds of millions claims made. In Flemming I can
2 say that when we got to the final numbers that came
3 out of the debtor's reclamation point, it had gone
4 from hundreds of millions down to about a twenty
5 million, and part of that was because the stuff has
6 been sold through. And it wasn't there any more and
7 we couldn't claim it. And because there was no say
8 in the process the argument was that what was a
9 couple hundred of million dollars is now a twenty
10 million claim, and by the way that was valueless
11 because the value of the inventory was not greater
12 than the amount of the secured debt. We are not
13 fighting with the secured creditors here. We are
14 not really trying to fight the debtors. What we are
15 saying is don't limit our rights under the
16 procedures.

17 THE COURT: All right.

18 MR. CARRIGAN: Thank you, Your Honor.

19 MR. GALARDI: Your Honor, I never had a
20 procedure objected to like this, so I would do what
21 I did with the utilities, I would carve him out
22 because these procedures do not apply to him.

23 MR. CARRIGAN: Your Honor, we did
24 not ask to be carved out. We asked for a fair and
25 equitable procedure. If Counsel wishes to

1 carve us out then Counsel should give us a
2 fair and equitable procedure. If Counsel
3 does not wish to do that then the Court
4 will really have to rule up or down on it.

5 THE COURT: You are not
6 bound by the procedures under procedural
7 order then you have all of the rights that
8 you had coming in and nothing has been
9 compromised today and you can proceed by
10 motion or whatever you want this Court to
11 grant you.

12 MR. CARRIGAN: Your Honor,
13 superficially I would say that is right. But
14 as a practical matter what is going to happen, our
15 client has a three and half million dollar claim.
16 And, again, Your Honor, we didn't ask to be carved
17 out, what we say to the Court is the problem with
18 this order is it's unfair. It has a subitive
19 impact and --

20 THE COURT: But if it's not
21 impacting you how --

22 MR. CARRIGAN: It does impact us,
23 Your Honor.

24 THE COURT: You are not a part of it.

25 MR. CARRIGAN: Your Honor, this

1 would be like if the debtor came to you and said we
2 have a motion that we are going to apply to a whole
3 class of creditors except this one. Now that is
4 obviously discriminatory.

5 THE COURT: I don't understand.
6 If you want to be excepted from the order then you
7 can, if you want to be a part of the order you can.
8 So it's not discriminatory. You can pick which way
9 you want to go.

10 MR. CARRIGAN: It's not quite the
11 picking, Your Honor. And, frankly, let's examine
12 what would happen if we were on our own. If we were
13 on our own then we would have the right to go in and
14 file a reclamation claim with this Court. We would
15 then have to go through the preliminary injunction
16 and the process. And then the bank for three
17 million or two million, or whatever is left, they
18 could foreclose upon us and use the money to pay
19 down. While every hundred perhaps, or how many
20 other reclamations are out there are going to be
21 sitting there and hoping that one day the debtor --
22 we are at a loss if we are all by ourselves in this.
23 I mean that is the answer to this.

24 The debtors asked for a one side
25 fits all solution. Our response was yes, a one side

1 fits all make sense, but it needs these kind of
2 modifications. If we are not going to consent the
3 carve out. And we were very careful in our motion
4 to ask for not to be carved out, what we asked for
5 was a fair process. If the fair process is not
6 going to be afforded or what do we view as a fair
7 process, or the Court can decide it is a fair
8 process. And if they do the Court can impose it on
9 us and we certainly will obey the Court's order.

10 But the carve out is not a realistic --
11 again, Your Honor, frankly the debtor filed this
12 motion and they asked for relief under 546(H). And
13 it included all of the elements under 546(H) subject
14 to the rights of the secured creditors and subject
15 to a lot of other things but they left out the
16 consent of the affected creditor.

17 Now what were they going to do when it
18 comes back later. Were they going to say that
19 anybody that didn't object to this motion has
20 consented so they get their goods back when ever
21 they get them back and whatever they are. That's
22 the danger of these things is that this process
23 offers the opportunity for the debtors, and not even
24 having to disclosure to anybody.

25 And, frankly, Your Honor, no,

1 we will not consent to being carved out. If the
2 Court carves us out, the Court carves us out. If
3 the Court overrules our objection, the Court
4 overrules our objection.

5 But our problem is the debtor
6 wanted one size fits all process. It is not only a
7 process it is also a substantive affect. And we
8 suggested a process that has proven out, it has
9 worked in other cases that would be applicable to
10 all. If the Court chooses to disregard that, or
11 rule that it is inappropriate or unfair, we respect
12 that and we want the Court's judgement.

13 Thank you.

14 THE COURT: Mr. Galardi.

15 MR. GALARDI: Your Honor, with
16 respect to the process, I think, Your Honor, in
17 reading through the brief again, I find the process
18 some what -- the reclamation claims are secured
19 creditors under the modification of the code. They
20 have secured creditors rights that can be asserted
21 and they have the rights in pursuing those. What we
22 found, Your Honor, in dealing with all of those
23 protective orders, and then we are going to first
24 day motions to try to avoid being in Court every few
25 days. I understand at the end of the day you are

1 selling goods. And why we draft the procedure the
2 way we do and why we are very clear, if they are not
3 comfortable with these procedures, then you are
4 entitled to file a lawsuit, a request for a stay, a
5 temporary injunction, because we do understand.
6 This is just like outside of bankruptcy, every day
7 those goods get sold their reclamation claims may
8 become less. They can protect their rights. This
9 was a mechanism to give us notice so we can have
10 conversation.

11 But if people are concerned about
12 that then we can carve them out
13 of the motion, or the motion in
14 particular, they are filing an
15 action getting a preliminary
16 injunction and getting their
17 goods. So in that context, our
18 brief is actually helping
19 creditors understand that they
20 have rights now as secured
21 creditors. They can optimize
22 the procedures and know the
23 risk. But if you don't want to
24 be in a procedure, here is what
25 the code says, and by the way

1 the procedure doesn't preclude
2 you from doing what the code
3 says, or what lawyers do, namely
4 file a complaint. Whether he
5 wants to be in or out, what the
6 consequences of saying if you
7 are not happy then you should
8 come in and protect your rights.
9 The debtor is not going to
10 protect all of those rights. We
11 are going to try to work with
12 the committee and come up with a
13 process. We do support our
14 vendors. But this was to get a
15 notice so we can start talking
16 about that. But it doesn't
17 preclude anybody that is unhappy
18 from coming in and asking for
19 relief. So we ask Your Honor to
20 overrule the objection.

21 THE COURT: The Court is going
22 to overrule the objection. I will approve the
23 procedures, and if the creditor wants to opt out of
24 the order, he may.

25 MR. GALARDI: Thank you, Your Honor.

1 Your Honor, we now come to matter 19,
2 which looks like it may have taken a long time,
3 Your Honor, we very much appreciate you giving us
4 the hour to talk before we came in.

5 I am very hopeful to say that we have
6 resolved all but one objection. I think we have
7 resolved these objections. I think this goes to
8 number 19, number 20, and I believe there is one
9 other one. I am going to say some things that what
10 I think we have agreed too. I am sure there are
11 plenty of landlord counsels behind us, behind me
12 that may come up. This is also with the effort and
13 the suggestion of the Committee, who has two very
14 large landlords that have many leases.

15 The first thing we would agree to Your
16 Honor and you can see from our brief that there is a
17 split in authority between a billing date and an
18 accrual date. What we have agreed with every single
19 objecting landlord, we will agree that the accrual
20 method applies. So therefore and we have a number
21 of leases as I explained to the parties, and one
22 reason why you have gotten so many objections to 365
23 before because of the complicated restructure.

24 Your Honor, I think I explained in the
25 first day we have what we call the surplus leases

1 that were already rejected but under rejection
2 motion. We have been going forward the leases that
3 are store closing leases so we are concerned about
4 whether December and how the accrual method works.
5 We have the stores that we have no intention to
6 leave at this particular time. And among those
7 stores some are paid in advance, but unfortunately
8 some are paid in arrears. So there is an objection
9 out there today that somebody would be paid rent on
10 November 30th, but it would go back to November 1st.
11 So we have agreed that regardless of the way your
12 lease works, if you have objected we would apply the
13 accrual method with respect to you.

14 Any landlord who is not an objecting
15 party we will not agree to that. We will reserve
16 our rights to argue otherwise. We understand that
17 the circuit may have the accrual method, but we will
18 reserve our rights to say otherwise to do whatever
19 we need to do. But we are with respect to any
20 objecting landlord in the room we are agreeing the
21 accrual method applies. It applies not only to
22 those who pay in advance but also -- for example,
23 there is one landlord in here that has a November
24 30th payment that would go back. They agreed I
25 don't have to go back all the way to November 1st.

1 I am only going back to November 10th and paying
2 that rent. And to stay consistent with 365(B)3, we
3 are going to actually take up one of the accruals we
4 will pay. That was one of the many points that we
5 did.

6 Your Honor, the second part of
7 this 365(B), we also agree with the landlords that
8 we needed a 365(B)4 extension for the reasons set
9 forth in the record on the first day. We have
10 agreed with the landlords. I think we have resolved
11 every objection in 365(B)4 motion. But to make
12 clear there are carve outs to that 365(B)4 and again
13 we didn't realize the carve outs when we made them.

14 In particular, if you were what
15 we call the (inaudible) leases we didn't have the
16 inventory, this motion does not apply to you. You
17 are carved out. So I still have my 120 days with my
18 rights to ask for an additional 90 days. If you
19 were a GOB store because we are liquidating
20 inventory in those stores. We are going at a store
21 closing store, we are not going out of business. If
22 you are in one of those since we liquidate the
23 inventory, again we are not exceeding the 364(B)4
24 extension. What came to my attention and the banks
25 have agreed too. There were some leases that were

1 in a construction phrase. Obviously we didn't have
2 inventory, but we didn't know and there extensions,
3 we are not seeking an extension with the
4 inconstruction, again, the lenders are concerned
5 about the liquidation of the inventory.

6 Your Honor, we agreed that we would
7 again, and I understand this is an issue in this
8 jurisdiction in particular which I have learned this
9 morning, there is an issue of timely obligation in
10 the accrual of stub rent. Landlords are very
11 concerned about the stub rent, and if we don't pay
12 the stub rent right now there will be consequences.
13 We have agreed to at least for this purpose and
14 there are reasons, business reasons, we have been
15 working with the Committee, any of the requests to
16 have immediate payment of stub rent, whether that is
17 in the form of a motion, or in the form of an
18 objection, or in the form of an objection from the
19 365(B)4, we are saying you don't need to make a
20 motion. If you have already done it, and all such
21 objections are going to be adjourn over to December
22 22nd. With that said because of the accrual method
23 we will agree that they are administrative claims,
24 and we are really talking about the timing of the
25 payments of those. I guess the concern is here that

1 if they delay the payment on it we would ask Your
2 Honor to enter an order to protect them from the
3 delay of any payments right now at least.

4 My understanding is if they
5 receive an order tomorrow and this is today saying
6 immediately pay it they are out of that
7 disgorgement, the dissolution issue, so they were
8 very concerned about that and that is what prompted
9 a number of motions and reactions.

10 We have agreed that, if Your Honor
11 agrees, to help get us to that December 22nd date to
12 not fight the issue of the timing of that thing is
13 and that hopefully get beyond that and to not fight
14 issue, at least from now until December 22nd, the
15 facts that they have delayed, not delay, we asked
16 for a delay, the fact that we are not paying it now
17 should not subject them to dissolution or
18 disgorgement or anything else and we come back on
19 the December 22nd to discuss the issue.

20 In addition, Your Honor, as I've
21 told the landlords, with respect to stub rent, Your
22 Honor, we have two types of leases now. We have the
23 leases that the stores are liquidating during --
24 under the agency agreement although they are not
25 third party beneficiaries of that agreement we have

1 agreed to pay because we are being paid by the
2 agent, we have agreed to pay that rent. Again if
3 you live by the accrual method you are going to die
4 by the accrual method so that means and they all
5 agreed that if we stay on through mid-December that
6 having pay December 1st rent, we will have rent and
7 we can actually vacate the premises, and we are
8 working on what that means, then we only pay for the
9 two weeks so the landlords are agreeing to that sort
10 of method.

11 I think and I know I jumped around
12 because I got to go back to the objection motion,
13 but it all goes as one big piece. Those were the
14 major concerns that resolved the 365(B)4. Your
15 Honor, our motion may read incorrectly, so I want to
16 be clear on the record. If we will have to actually
17 assume or actually reject by the earlier of the
18 confirmation date or the 210 date, not that we would
19 file motion on that date to extend that time period.
20 Now with respect to confirmation we would have to
21 make a notice that we are assuming confirmation, but
22 as normal we would not have those go affective until
23 the affective date and they agreed to that. But we
24 can't change and play games with the confirmation
25 and the affective date to say ha, ha, we assumed it

1 and now are rejecting it. So I think that was
2 another issue that they had that we have resolved.
3 Your Honor, the other things that
4 we have resolved with respect to some of the
5 properties is, and I will wait until they come up,
6 there were a number of people that objected to the
7 rejection. And the issue comes down to a number of
8 issues. This is where I think there is one
9 outstanding objection. We have two problems and
10 most of it comes from did we give the keys back, did
11 we surrender the premises. We have a witness who
12 would be available to testify of that. What I
13 thought we would do in that case is argue that
14 everybody rights are reserved. If you raised the
15 objection that the affective date of our rejection
16 or we didn't surrender the premises for whatever
17 reason, it was not November 9th, or November 12th,
18 or November 19th, or whatever, as long as you agree
19 that it was by November 30th, so we put a perimeter
20 around that date and all rights are reserved and
21 argued whether there was an affective surrender or
22 not, then we have agreed to that. We are not going
23 to put on evidence today of that. We will try to
24 resolve that. And, again, that would be a stub rent
25 claim, if we were wrong and it was not of the

1 affective date and we have our position, they have
2 theirs and then we will talk about if it's two days,
3 three days, four days stub rent. But it will be
4 treated like all of the other stub rent claims
5 without the subject of dissolution on those issues.
6 I think that is resolved. I will find out when I
7 leave the podium of that.

8 Your Honor, then we have our stub
9 rent, the sublease issue. You see a number of
10 objections from landlords where they are the
11 overlord or the sublessee, I believe that we are
12 agreed in accepting in one situation that because we
13 gave notice of the rejection both to the overlord
14 and to the sublessee, will agreed that both have
15 been rejected. Nonetheless, we couldn't do all of
16 this before -- but we still want to do a deal. We
17 are letting them have more time. We will gladly
18 help them. But we will certainly suspend it to
19 December 22nd, if they could work out deals. We
20 have no problems with people working out deals as
21 long as we are clear that there has been a rejection
22 and those people can still fight what the date of
23 the keys were. One landlord still may have an issue
24 on that.

25 Your Honor, then we have the unfortunate

1 circumstances for them, perhaps fortunate for us, is
2 that some of the sublessee pay rent for the month of
3 November on the 1st and we didn't pay rent to the
4 landlord. Since we have money prepetition put into
5 our accounts, we told them we were unfortunately
6 unable to pay that money back. So we agreed that if
7 they want to come in and argue that point we can do
8 that with Your Honor. We can't without an order of
9 the Court say by the way you got sublessee you get
10 back the money. That is something that the Court
11 will just have to decide. We would oppose it.
12 Landlords are free to argue that. We are not
13 resolving that today.

14 But as a compromise on the other
15 side, some landlords did in fact make the December
16 payment. But we didn't pay December rent because we
17 thought they were rejected. What we told the
18 landlords was we are not going to try to make in the
19 postpetition period. That's just an accounting
20 problem. We would if we got it, give the money to
21 the landlords, back to the tenants pending upon the
22 circumstances. That is what they want. Again,
23 there is one landlord that may say we took it and we
24 got the rent. Everybody else has agreed with that
25 provision.

1 We then got to the fifth
2 procedures, Your Honor, and again, I think we got
3 pretty far on all of these and then I will leave the
4 podium to the landlord counsels. There was a
5 concern about notifications with respect to this
6 procedure adequate insurances, and I'm hoping that
7 we settled these in this environment. But as a
8 precaution what we have agreed to do, and I think
9 there is a December 17th date by which we would have
10 to give notification to the parties as to the
11 bidders of the properties for adequate insurance
12 information. We would by Friday noon post on the
13 website and hopefully send out to the landlords, if
14 there is a bid on their property we would notify
15 them of the potential bidder. And I think the
16 hearing is December 22nd, so the ideal is give them
17 notices back.

18 We would modify the bid requirements of
19 anyone who wants to bid on them. So if we don't get
20 a bid we are going to give that five days notice of
21 the date of rejection. But the rejection would be
22 affective again this goes to what constitutes
23 surrender, we would give notice, you get five days
24 notice to turn over or shut off the alarm code. And
25 I said we would make reasonably efforts to give them

1 the alarm code and turn over the keys and to
2 deactivate the system if we are not going to be
3 there.

4 And with respect to third parties
5 we would try to -- they were concerned about the
6 property. We are aware of perhaps the collateral of
7 the banks. What we would do is try to give notice
8 and we will do the best that we can to all third
9 parties that we believe have property in there. And
10 the same five days notice saying take it or it will
11 be given to the landlords free and clear so they
12 don't have a liability should they get it, should
13 they throw it out, or should they sale it.

14 We also agreed, Your Honor, that it is
15 really not appropriate until the actual sale of the
16 property, if the period of time that the order may
17 become immediately affective. That would be
18 December 22nd if we are in the position to that.

19 Finally, Your Honor, I think on December
20 22nd what we have agreed to is we would only go
21 forward on the uncontested sales of leases, and if
22 there is a contestant matter with respect to the
23 sales of the leases and the parties couldn't agree
24 to go forward on December 22nd, we would come up
25 with some hearing, Your Honor. If we need to do it

1 before the year end, we would ask for time for that.
2 But at least we will agree temporarily not to try to
3 force if the parties are not prepared to go forward
4 on December 22nd, given that date, it's the 17th and
5 18th becomes the weekend and then we are back here
6 so we would agree to that.

7 Let me test my memory and see if
8 there is anything else. Now my understanding, Your
9 Honor, with respect to all of the parties other than
10 I think two parties, one of the sublease and the
11 rejection, one trying to determine by putting off
12 motion to compel could be done on December 22nd. I
13 actually think that resolved all of the objections
14 to the rejection motion, which was number 19. It
15 resolves a lot of objections to 20 as well Your
16 Honor. It resolves all of the objections with
17 respect to the motion listed on 21, which is the
18 extension of the 365(B)4. I think we should
19 probably stop there and let the counsels go. I will
20 go back to this, motion 20, which is the agency is
21 resolved by I believe most -- I see Mr. Branch
22 coming up -- but in addition, Your Honor, we want to
23 make clear in a modified order, as Your Honor is
24 probably familiar the agent has been dealing with
25 landlords on all of those issues. We want to make

1 clear that the agent could landlords that are
2 enforceable. We want to make sure that the agents
3 have the authority to do so, that those letter
4 agreements could be approved and finally that the
5 sale of the would be free and clear of all those
6 claims and encumbrances. Again, the bank group had
7 agreed to the original motion to do that. If there
8 is an issue with the bank group, that we would in
9 fact make sure that is possible on that aspect.

10 Your Honor, I may have missed some
11 parts of my script before they all come up and
12 speak.

13 THE COURT: Let me ask you this
14 question, please. Should we plan a lunch break?
15 Would it make sense to talk a little bit with the
16 landlords to see if there was something not put on
17 the record because it sounds like to me that you
18 made tremendous progress this morning in just one
19 hour. Does it make sense for us to take a break or
20 do you want to push through?

21 MR. GALARDI: Your Honor, I think
22 we should take a break. I'm not sure that there are
23 many other matters. But it may be worth it to take
24 a break. Let me go through this, 22 is a motion to
25 compel rent. And 23 is the same, 24 is the same, 25

1 is the same. Your Honor, has already disposed of
2 26. And 27 is again a motion to compel rents. And
3 28, Your Honor, is to the supplemental sales use.
4 Your Honor, I believe with one change to number 29,
5 that is also resolved. The landlords have asked for
6 clarification on that as well. It's the later of,
7 they don't have to file a general bar date. It is
8 the date by which it's 30 days after rejection, what
9 ever is the later of those two. So they don't have
10 to put in all of their prepetition damage claims.
11 There is an outstanding objection. We are agreeing
12 with the agency governing 180 days. That takes us
13 to number 30, I believe, that will be a matter we
14 will be hopefully resolving. Number 31, Your Honor,
15 is already handled. And 32 would be addressed and
16 33. So I do think a break at this point might clean
17 the whole agenda except for maybe a couple
18 objections.

19 THE COURT: All right. We will go ahead
20 and do that.

21 How long do you want to take a break?

22 MR. CURLY: Paul Curly, I want to
23 introduce the Court to Mr. Cunningham. I have an
24 obligation this afternoon and I was going to ask Mr.
25 Cunningham to be able to appear without me being

1 present.

2 THE COURT: Certainly. That will be
3 granted.

4 How long do you want to break for?

5 MR. GALARDI: Your Honor, if you want
6 to take a lunch break now, it's 1:00. Would 2:00
7 give everybody enough time. I think a break until
8 2:00 and we can work the language out and that will
9 give your staff time to have lunch and we can finish
10 this up.

11 THE COURT: We will stand adjourn until
12 2:00.

13

14 (A lunch recess was taken.)

15

16 THE COURT: I see everyone is back.

17 MR. GALARDI: Your Honor, there is a
18 gentleman here that is not on the agenda, who
19 represents the monitor in Canada. I think we should
20 take that one first before we go back on the docket.

21 THE COURT: Who in Canada?

22 MR. GALARDI: As you know we filed a CCWA
23 proceeding.

24 THE COURT: Yes, sir.

25 MR. GALARDI: And he would like

1 to say a few words to the Court.

2 THE COURT: All right.

3 MR. GALARDI: Thank you.

4 MR. SMITH: Good afternoon, Your Honor.

5 Thank you for hearing us. J.R. Smith from Hutton &

6 Williams. With me today is Mr. Ken Coleman. I

7 would ask you if he may be heard today.

8 THE COURT: Yes, sir.

9 MR. COLEMAN: Thank you, Your Honor.

10 I will be very brief. Those proceedings

11 are commenced in Canada that these Ch. 11 cases were

12 commenced. We represent the monitor who was

13 appointed in that proceeding. As Your Honor may be

14 aware the appointment of a monitor is required on

15 the statute. There is a great deal of attention

16 being paid in the Canadian proceedings. Very

17 briefly, I just wanted to outline a couple of points

18 to the Court. One is the monitor's role in the

19 Canadian proceeding. The monitor is an officer of

20 the Court. He is not a party to the proceeding. He

21 is independent, neutral, and intended to assist the

22 company and the creditors to achieve a

23 restructuring.

24 One of the functions of the monitor

25 is to file periodic reports that is the principal

1 means of the communication of the Court to appoint
2 the monitor and the principal means of
3 communications between the creditors,
4 constringencies in the proceedings. We have done a
5 fair amount of work representing monitors in the US
6 cases. And some Courts have found it helpful to
7 receive copies of those reports to be filed into the
8 US proceeding. We are happy to do that here if Your
9 Honor thinks that would be of interest or somehow
10 informative. We are happy to proceed on that basis
11 if you think that would be helpful to the court.

12 Later today, I think in about an hour's
13 time there is a hearing to approve a sale process
14 and that is designed to be a dual process, Your
15 Honor, a stand alone process for sales or in
16 conjunction with a larger transaction made. That
17 process in Canada is on a pretty fast track.
18 Proposals, current proposals are due by the 15th of
19 January. And it is intended or at least proposed in
20 the order that will be submitted today that the
21 monitor have full participation in that process in
22 Canada. That transaction if it goes forward would
23 require approval by the Court and depending on the
24 other aspects of the deal particularly if there are
25 some US elements to it, there may be a need for

1 coordination and cooperation between this Court and
2 the Canadian Court. It may be useful in that regard
3 for the two courts to have communication. And we
4 would make available to your chambers the contact
5 information if Your Honor would feel that it is
6 appropriate to communicate.

7 Just very briefly, Your Honor, the other
8 two items up for today in Canada are extension of
9 the stay, proposals to extend that out to January
10 30th and as well to make certain modifications to
11 the initial order that was granted on the first day.

12 Your Honor, if you think it would be
13 helpful to this Court we can file those pleadings
14 and those orders along with the reports as you wish,
15 and provide as much or as little information as Your
16 Honor would desire to see. Those are my comments.

17 Thank you very much.

18 THE COURT: Thank you very much.

19 Mr. Galardi, do you think those would be
20 helpful to have the reports or any of those
21 pleadings filed in connection with this case?

22 MR. GALARDI: Your Honor, I have know
23 objection if you have an interest to do that.

24 THE COURT: I don't know if we need
25 to have the pleadings filed.

1 MR. GALARDI: Your Honor, we have been
2 involved with the monitor. We have discussed the
3 process and how it coincides with the process here
4 in the United States. We had a meeting already with
5 the monitor. I think having the monthly reports
6 that they do is a good ideal. If there is some
7 pleading that they thought is really important they
8 could always file it. The reports might be a good
9 ideal to get.

10 THE COURT: Very good.

11 MR. COLEMAN: Thank you, Your Honor.

12 MR. GALARDI: I do believe we have
13 resolved the landlord type motions and all of the
14 issues. I would turn to matter 19. Matter 19 is
15 the motion of us to reject leases and to abandon
16 property. I guess I missed a couple of things that
17 I would like to put on the record with respect to
18 this that I think finalizes it.

19 There are three objections, Golf Galaxy,
20 Dick's Sporting Goods, and Dollar Tree. We have
21 agreed to adjourn their objections to rejection over
22 to the January 29th date.

23 THE COURT: Those are Golf Galaxy, Dick's
24 Sporting Goods, and Dollar Tree?

25 MR. GALARDI: Yes, Your Honor.

1 There are also agreements
2 between landlords and subtenants that we are going
3 to have side deals where there will be assumptions
4 and assignments as opposed to a challenge of
5 business judgement, where we had at least made it
6 neutral, I believe, with landlords. One would be
7 Cardinal Distribution would be the landlord and GEI
8 is the subtenant doing business as CP Transportation
9 Systems. The second would be OLP6609 Grand LLC with
10 Lazy Boy as the subtenant. And then I have, I think
11 it's Ban CCIWR Business Trust with DHL. So we would
12 seek to have those agreements. Your Honor, with
13 respect to the actual date of rejection as well as
14 you have seen a lot of landlords say we have
15 banished the property especially with types of
16 claims they may have in addition to stub rent, all
17 rents are reserved. We are not trying to say that
18 there is not an administrative claim. We are not
19 saying that there is. We are just reserving all
20 rights for people to make any claims they want out
21 of this including a claim for stub rent and
22 contesting whether we actually are entitled to the
23 date of rejection. If I'm not mistaken that
24 resolves all of the objections.

25 THE COURT: Thank you.

1 Does anybody wish to be heard in
2 connection with the motion authorizing rejection of
3 an expired lease?

4 MR. LESTERMAN: Robbie Lesterman.
5 Your Honor we filed a joinder in the objection of
6 Dick's Sporting Goods.

7 THE COURT: Right.

8 MR. LESTERMAN: We filed it last
9 yesterday evening. The objection is docket number
10 275, I believe. And I just want to make it clear
11 that we just simply join in that objection. We are
12 the primary landlord with respect to that lease and
13 so we have no problem with carrying that objection
14 or joiner over to the 29th.

15 THE COURT: Thank you.

16 MR. LESTERMAN: Thank you.

17 MR. GALARDI: Your Honor, there is one
18 lease that we have not moved to reject, or didn't
19 apparently have it on our sublease rejection, that
20 we agreed with Counsel that we would do.

21 MR. CUNNINGHAM: For the record, Your
22 Honor, Gary Cunningham appearing on behalf of the
23 landlord in Detroit, the service center for Circuit
24 City in that geographic location. There is a
25 subtenant, apparently a subtenant lease that we

1 weren't party too. They have not received any
2 notification of what is happening here in this Ch.
3 ll proceeding. Counsel for the debtor and I have
4 agreed that that needs to be resolved as well. And
5 I believe debtor will take all of the steps
6 necessary in order to get notice in file a motion in
7 order to reject that sublessee.

8 MR. GALARDI: That's correct, Your
9 Honor.

10 MR. CUNNINGHAM: And we also agreed,
11 Your Honor, as other landlords have on the proration
12 method being the law of the case here. The only
13 other issue we have is our damage claims and we
14 agreed that we will preserve those as the same as
15 the debtor. And I think that resolves everything.

16 THE COURT: Very good.

17 What is the docket number? Did
18 you file an objection?

19 MR. CUNNINGHAM: We did, Your Honor,
20 docket number 260. I'm not certain what the letters
21 were. The original one was 260.

22 THE COURT: That's sufficient. Thank
23 you.

24 MR. CUNNINGHAM: Thank you, Your Honor.

25 MR. GALARDI: Your Honor, the other

1 one is there is an objection, I think it's docket
2 number 368, Home Family Trust, we have reached an
3 agreement with Counsel.

4 I think that resolves all of the
5 objections on number 19. What we intend to do is
6 work on an order and we will circulate an order on
7 Monday morning, circulating to the parties so that
8 they can review it to make sure I've gotten
9 everything.

10 THE COURT: So do you anticipate
11 there will be one order for every landlord, or are
12 you going to circulate separate orders for each of
13 the landlords who have objected?

14 MR. GALARDI: Good question. I
15 think what we will do is resolving their objections,
16 Your Honor, because remember this was a motion to
17 reject, they objected to that. So we will circulate
18 it to them. And if they need a separate order then
19 we will do a separate order trying to get on record
20 any agreements, if necessary, if they are
21 comfortable with my representations. They can
22 contact us if they want an order for that.

23 THE COURT: All right. Very good.

24 MR. GALARDI: Your Honor, may I have
25 permission that if we don't need to file an order

1 but we have an agreement by email or other way that
2 that will be sufficient instead of filing an order
3 or stipulation, if landlords are comfortable with
4 that.

5 THE COURT: That is fine with the
6 Court.

7 MR. GALARDI: Thank you, Your Honor.

8 Your Honor, as I move to matter 20, I
9 believe that this is the motion with respect to the
10 Gordon Brothers. Your Honor, I neglected to say --
11 I mentioned that there was (inaudible) Company that
12 was being sold. Your Honor we amended the agreement
13 with respect to sale. What had happened was we
14 decided to go away from Gordon Brothers and thought
15 we had a better deal and it was our only option to
16 do so. Then once we received the better deal we
17 then circulated that deal and Gordon Brothers made
18 the higher proposal, which is reflected in the
19 letter of agreement. We shared that letter with the
20 creditors committee. I wanted to bring that to the
21 Court's attention so we ask for approval to proceed
22 that way.

23 In addition, Your Honor, I missed
24 a number of little points, well big points to
25 everyone. First landlords will be authorized to

1 appear at the auctions whether they bid or not.
2 Second is that landlords will be entitled to credit
3 bid, we have the right to contest whether it's a
4 valid amount. And those credits will include both
5 prepetition and postpetition accrual again with
6 respect to the landlord's bidding.

7 In addition, the landlords if bidding on
8 their own lease would not have to make a good faith
9 deposit on their own lease. It is their own lease.
10 Obviously if they go on any other lease they get
11 treated like any other bidder.

12 I may have misspoken that the adequate
13 insurance information be transmitted is actually
14 December 16th. And then I have the obligation by
15 December 19th at noon put on the record where these
16 properties have gone. And I'm loosing my notes on
17 the December 17th date. Secured objection deadline,
18 which I didn't refer too. Apparently there is a
19 shorter period with our modifying this order, that
20 will be modified over the weekend. It's already a
21 deadline, but we are essentially extending the
22 deadline for persons to make objections. It will
23 give the landlords more time to make the
24 calculations and make the objections. And then any
25 amounts if we do sell the properties and we have an

1 agreement, or to the extent we have an agreement, we
2 would pay up the amount and we are not going to hold
3 the landlords hostage to the full amount being
4 resolved unless there is such a gigantic difference
5 that we can't agree. But I can't imagine that will
6 be the case. We will pay the uncontested amounts at
7 that point and then we can resolve any other
8 additional amounts at a later point. I believe that
9 there resolves all of the objections to number 20.
10 And on this one what we were doing and Counsels to
11 the landlords have been very helpful here, we have
12 modified the order to reflect all of my comments,
13 the additional comments. The ideal would be to
14 circulate this order to the objecting parties. We
15 ask if they don't have their emails on something we
16 already have to give us their emails to circulate
17 that order on Monday morning and then to get all
18 comments around noon or 1:00, and then try to
19 circulate and file that order for Your Honor by the
20 end of the day, Monday. It may split to Tuesday.
21 We will be sure to get these deadlines out there.

22 THE COURT: All right. Very good.

23 Does any party wish to be heard with
24 connection of this motion?

25 MR. FEINSTEIN: Robert Feinstein

1 with the creditors committee, we just ask even
2 though we didn't object to this that we be included
3 in all of these orders being circulated.

4 THE COURT: I would assume you
5 would be included or at least that would be my hope.

6 MR. GALARDI: Yes, sir.

7 Your Honor, I think on the hearing
8 we have the whole day scheduled for the 22nd.

9 THE COURT: You do.

10 MR. GALARDI: What I would suggest
11 is that at least this matter be scheduled for the
12 afternoon. If we have a big enough calender we can
13 deal with other things in the morning. But at least
14 this matter be scheduled for the afternoon if that
15 is acceptable. And maybe we can resolve some
16 objections on some other matters if that is
17 acceptable.

18 THE COURT: That is acceptable.
19 So we will set this matter down for 1:00.

20 MR. GALARDI: That will be great,
21 Your Honor. Thank you.

22 Your Honor, now we turn to matter
23 21 on the agenda, which is the debtor's motion to
24 extend time under 365(d)4. As I earlier mentioned,
25 Your Honor, we would be extending the time but it

1 would all be for the 210 days that would have to be
2 done to assume or reject it. Clarification on the
3 record, Your Honor, we put in the order a paragraph
4 that provides that we will satisfy our client's
5 obligation that is required by 365(d)4. And then
6 the way that we worked out a procedure is that
7 landlords, if they believe we have not done so, they
8 will give us five days notice. We will have five
9 days to either fix it or we agree to have to come
10 back to the Court on an expedited basis. I think
11 that resolves all of the objections with respect to
12 -- and the other things I said earlier with respect
13 to the 365(d)4. I think that is the thing that I
14 missed earlier.

15 THE COURT: All right. Very good.

16 Does any party wish to be heard in
17 connection with the motion to extend time in which
18 the debtor may assume or reject leases?

19 MR. EPPS: Good afternoon, Your
20 Honor, H.C. Epps, Jr. on behalf of many of the
21 objecting landlords. I asked Mr. Galardi and he has
22 given me permission to clarify something that he
23 said earlier about the timing. Our group of
24 landlords and another of others have objected to the
25 payments and stub rent for any period of time based

1 on the language, would have get paid in a timely
2 matter in order to avoid be put into the general
3 administrative expense claims pocket only paid at
4 the end of the case. We had agreed as to the
5 landlords, the payments is considered to be made as
6 of today whether or not it's heard at some other day
7 and that issue will not be raised as to us, the fact
8 that we were not here on a timely basis, that was
9 spoken before lunch but I want to clarify that was
10 what we worried about and we do have an agreement on
11 the issue.

12 THE COURT: Very good.

13 MR. EPPS: Thank you.

14 THE COURT: Thank you.

15 MR. MCCULLAGH: Good afternoon, Your
16 Honor, Neil McCullagh. I have filed a motion to be
17 here today. I would allow Mr. Wood to address the
18 Court on this.

19 THE COURT: Mr. Wood.

20 MR. WOOD: Thank you, Your Honor.

21 Your Honor, our lease is one of
22 the under construction leases, no inventory, it
23 originally was on the extension list and now
24 it's been taken off and we appreciate that. The
25 debtor, as Counsel said, the current date now will

1 be March 10th as the drop dead date for
2 assuming or rejecting and we realize that
3 and the debtors has reserved its right to extend
4 that time. We realize that.

5 But we just want the record
6 to be clear that we are reserving all rights
7 to seek a shorter period, but we will reserve
8 our rights to do so. We have about approximately
9 \$736,000.00 contract on the particular lease
10 and under California law they have a time limit
11 in which they can affect that. And some of
12 those time limits are going to be coming due.
13 Certainly they will be coming due before
14 March 10th. Some of them will be coming due this
15 month. We already had one. We actually had two
16 filed and we anticipate a lot more. The parties are
17 working on the termination agreement and I hope that
18 the parties will be able to resolve this, but if not
19 we may be back as soon as December 22nd telling you
20 that if this needs to be compelled -- I didn't want
21 the Court to be surprised by that so we are
22 reserving our rights to do that.

23 THE COURT: Thank you.

24 MR. WOOD: Thank you.

25 MR. CREMSHAW: Good afternoon,

1 Your Honor, William Cremshaw on behalf of various
2 landlords and particular with regard to objection
3 607. We have a distribution center in California
4 where our rent is due in and we agreed with the
5 debtor for a payment that was due on November 30th,
6 we have agreed to prorate that from the postpetition
7 period with the understanding that in the event the
8 lease is subsequently rejected we would also be
9 entitled to run it on a prorated basis.

10 So if they reject it on the
11 15th of the month then we would get half of the rent
12 for that month even though the rent wasn't due until
13 later. We just wanted to clarify that for
14 the record.

15 THE COURT: Thank you.

16 MR. GALARDI: Your Honor, the clarification
17 on the proration are absolutely fine. One of the
18 clarification -- I guess the benefit of being an
19 objector is hearing some of the argument
20 from other counsel. So I will make it clear.
21 if you are an objector even if you didn't ask
22 for your stub rent on any one of those three
23 documents but you are here objecting to any one
24 of those three motions you still have the right
25 and you don't have to file, you can make argument

1 and get what ever benefit with respect to stub rent
2 on December 22nd.

3 THE COURT: That is what I understood
4 you to say before we took the break.

5 MR. GALARDI: And, Your Honor, finally
6 on 365(d) motions to compel, and motions to shorten
7 time we reserve all of our rights as we do
8 otherwise.

9 MR. LEUSIN: Your Honor, if I may
10 be heard telephonically?

11 THE COURT: Who is speaking please?

12 MR. LEUSIN: Your Honor, this
13 is Sean Leusin. I represent VIWY Limited
14 Partnership. We filed an objection and I believe
15 it's docket number 711, with respect to this matter.

16 Mr. Galardi said earlier that
17 the deal that was set forth on the record related
18 to landlords in the room, and he just said a
19 moment ago landlords that are there, I just want
20 to make sure it covers me telephonically.

21 MR. GALARDI: Yes, as long as Mr.
22 Leusin stays on the phone. I meant anybody that has
23 filed an objection, Your Honor.

24 MR. LEUSIN: Thank you.

25 THE COURT: All right.

1 MR. GALARDI: Your Honor, I think
2 that is all of the objections to 21 so we will be
3 putting in an order with respect to that.

4 Your Honor, I haven't identified
5 every counsel with every lease, but I think number
6 22 has now been continued over to the December 22nd,
7 which is the motion of Burbank Mall Associates to
8 postpetition rent.

9 MR. (inaudible): I represent
10 Burbank Mall and that is correct, and also with
11 number 23 Crown CCI.

12 THE COURT: That is going to be
13 carried over to the 22nd.

14 Now will that be at the 1:00 time;
15 is that correct?

16 MR. GALARDI: Yes, Your Honor.

17 If it would make it easier for all
18 landlord counsels to do their matters at 1:00, and
19 then whatever else we can do in the mornings I think
20 would be appropriate.

21 THE COURT: That is what I thought
22 you said, I just wanted to make sure I understood.

23 MR. GALARDI: Your Honor, I think
24 that takes care of matter 23 as well.

25 Now I'm up to matter 24, which

1 is also a motion to compel rents, to pay
2 administrative rent. Again, I don't know which
3 Counsel represented them but there is an agreement
4 to adjourn.

5 MR. MICHAEL (inaudible): I represent
6 woodlawn Trustees, also represent docket 25, 502-12
7 86th Street, and number 27, the Basile Limited
8 Liability Company and we do agree to adjourn on the
9 22nd.

10 THE COURT: And that will be at
11 1:00 also.

12 MR. GALARDI: Your Honor, that
13 takes care of numbers 24, 25, 27, and number 26 on
14 the docket is already handled. And I think we moved
15 number 27 to the 22nd.

16 THE COURT: That's correct.

17 MR. GALARDI: Number 28 is already
18 addressed, which brings us to matter 29, debtors
19 motion a bar date. There are a number of objections
20 filed and I know there are a number of landlord
21 objections, and there are a number of taxing
22 authorities objections. I think the landlord
23 objections are now resolved. We have a language
24 I will make it clearer, that it is the later
25 of the bar dates 30 days after the rejection

1 or as otherwise provided in any order by the
2 Court.

3 I don't know if there are other
4 parties in court that have objections to the
5 bar date, notice or order. And I don't know
6 if Your Honor has any other concerns.

7 THE COURT: Does any party wish
8 to speak to the motion of setting the bar dates?

9 It appears that you have resolved
10 all of your objections to the Court's finding.

11 MR. GALARDI: Thank you, Your Honor.
12 We will submit an order reflecting those changes,
13 again with the revisions.

14 Your Honor, let me turn to matter
15 30, which is the bidding. Again, I think with all
16 of the representation I have put on the record
17 and of the order, I believe that resolves the
18 matters listed in number 30.

19 THE COURT: Does any party wish to
20 be heard?

21 MR. DAVID (inaudible): I really have
22 more of a question on next Monday on the 22nd. I
23 filed in some my motions requesting joining with
24 other landlords. I don't have a substantive objection
25 as to the information -- would the Court entertain

1 just one party with other counsel to piggyback in
2 with other Counsel on the same issue and let them
3 argue the issue and abide by the Court's order.

4 THE COURT: Certainly.

5 MR. GALARDI: Number 31 is the
6 Panasonic motion, Your Honor. I think Your Honor
7 has already ruled on that matter.

8 Number 32 is another motion
9 to compel the immediate payment of stub rent.

10 My understanding is that has already
11 been resolved Your Honor.

12 MR. WESTERMAN: That's correct.

13 THE COURT: You need to identify
14 yourself.

15 MR. WESTERMAN: I'm sorry.
16 Robbie Westerman.

17 THE COURT: Thank you.

18 MR. WESTERMAN: It's docket number
19 471, Your Honor. It was a motion to compel
20 payment of rent. I think it may be number 31 on
21 the revised agenda.

22 MR. GALARDI: I think it's number
23 32, Your Honor.

24 THE COURT: Yes, I have it as number
25 32.

1 MR. WESTERMAN: That matter has
2 been resolved.

3 THE COURT: All right.

4 MR. WESTERMAN: And we have prior
5 objections as well that has been resolved and that
6 can be taken off as well.

7 THE COURT: All right.

8 MR. WESTERMAN: Thank you.

9 MR. GALARDI: Your Honor, that brings
10 us to the last matter on the agenda, which was
11 demand by Green 521, this is I believe again a stub
12 rent issue. And I believe that it is resolved,
13 actually putting that over to the 22nd.

14 THE COURT: So we will put that over
15 to 12-22 at 1:00.

16 MR. GALARDI: That concludes the
17 matters on the agenda, Your Honor. And I appreciate
18 all of the time for being able to talk.

19 THE COURT: Thank you. I compliment
20 Counsel on being able to resolve all of these
21 complicated issues.

22 MR. GALARDI: Thank you.

23

24 (Hearing concluded.)

25

1 CERTIFICATE OF COURT REPORTER

2

3 I, Anne M. Nelson, hereby certify that I,
4 having been duly sworn, was the Court Reporter in
5 the United States Bankruptcy Court, Richmond,
6 Virginia, on December 5th, 2008, at the time of
7 the hearing herein.

8 I further certify that the foregoing transcript
9 is a true and accurate record of the testimony and
10 other incidents of the hearing herein.

11 Given under my hand this 12th day of December, 2008.

12

13

14 /s/ Ann Marie Nelson
15 Court Reporer

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